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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1124

STEPHEN GASKIN, *et al.*, *Appellants*,

versus

STATE OF TENNESSEE, *Appellees*.

On Appeal from the Supreme Court
of the State of Tennessee

JURISDICTIONAL STATEMENT

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IN THE

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No._____

STEPHEN GASKIN, *et al.*, *Appellants*,

versus

STATE OF TENNESSEE, *Appellees.*

On Appeal from the Supreme Court of the State of Tennessee

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of the State of Tennessee, entered on November 10, 1975, denying a petition for certiorari, and affirming the decision of the Court of Criminal Appeals of Tennessee which affirmed the dismissal of Appellants' Petition for Post Conviction Relief in the Circuit Court of Lewis County, Lewis County No. 1532. Appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW

The unreported opinions of the Circuit Court of Lewis County, the Court of Criminal Appeals of Tennessee, and the Supreme Court of Tennessee are attached hereto in Appendix A.

The reported opinions of the Supreme Court of Tennessee, *Gaskin v. State of Tennessee*, 490 S.W. 2d 521 (1973) and the Supreme Court of the United States, *Gaskin v. State of Tennessee*, appeal dismissed 414 U.S. 886, 38 L. Ed. 2d 133, 94 S. Ct. 221, Sup. Ct. No. 72-1718 (1973), are relevant and are attached hereto in Appendix B.

JURISDICTION

This appeal is taken to review the proceedings and findings of the Supreme Court of Tennessee, the Court of Criminal Appeals of Tennessee, and the Circuit Court of Lewis County in regard to Appellants' Petition for Post Conviction Relief made pursuant to Sections 40-3801–40-3824 of Tennessee Code Annotated. These Courts determined that in Appellants' direct appeal, *Gaskin v. State of Tennessee*, 490 S.W. 2d 521 (1973), the Supreme Court of Tennessee properly decided that the Tennessee Drug Control Act of 1971 as applied to Appellants (Sections 52-1409 (m); 52-1422; 52-1432 (a)(1)(F), (a)(2), and (b) of Tennessee Code Annotated, are valid under the United States Constitution. The judgment of the Supreme Court of Tennessee was entered on November 10, 1975, and notice of appeal was filed in that court on December 18, 1975. The jurisdiction of the Supreme Court of the United States to review the decision by direct appeal is conferred by Title 28, United States Code, Section 1257(2).

STATUTES INVOLVED

Sections 52-1409 (m) 52-1422; 52-1432(a)(1)(F), (a)(2),

and (b) of Tennessee Code Annotated; Amendments 1, 5, 8, 9. and 14 of the Constitution of the United States; Section 40-3805 of Tennessee Code Annotated, set forth in Appendix C.

QUESTIONS PRESENTED

1. The Tennessee state courts, in the post-conviction relief proceedings, erred in determining that the question of the Constitutionality of the Tennessee Drug Control Act of 1971 as applied to Appellants (Sections 52-1409(m); 52-1422; 52-1432(a)(1)(F), (a)(2), and (b) of Tennessee Code Annotated) had been previously determined in *Gaskin v. State of Tennessee*, 490 S.W. 2d 521 (1973), because the opinion, *Gaskin v. State*, *supra,* is illogical, prejudicial and inaccurate, states no legitimate grounds for affirming the judgment of the trial court and deprives the Appellants of their rights, privileges, and immunities guaranteed by the First, Fifth, Eighth, Ninth, and Fourteenth Amendments of the Constitution of the United States, so that the Appellants did not receive a full, fair, and adequate hearing in the Supreme Court of Tennessee.
2. The Tennessee Drug Control Act of 1971 prohibiting the cultivation and use of marihuana in our religious practices unconstitutionally interferes with the "free exercise of religion" guaranteed by the First Amendment to the United States Constitution.
3. The Tennessee Drug Control Act of 1971 prohibiting the cultivation and use of marihuana is legislation against a state of mind which cannot be proven or disproven by any instrument of state or science. The State can demonstrate no compelling interest in this state of mind. The Ninth Amendment to the United States Constitution protects our right to this state of mind.
4. The classification of marihuana with addictive and disabling drugs in the Tennessee Drug Control Act is an irrational

classification, is not reasonably related to public health, safety, and morals, is too broad in its restrictions, and thus violates the guarantees of "due process of law" and "equal protection of the law" guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

5. The decision of the Criminal Court of Lewis County to foreclose from the jury the consideration of whether we hold the belief honestly and in good faith that marihuana is a Holy sacrament and a central part of our religion, and to curtail testimony as to our religious practices and teachings unconstitutionally interfered with "due process of law" guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution in that the effect was to deny Appellants a fair trial by preventing the jury from full consideration of our religious beliefs.

6. The imposition of any criminal sanction as well as the punishment in the Tennessee Drug Control Act for the manufacture and possession of marihuana is "cruel and unusual punishment," in violation of the Eighth Amendment to the United States Constitution.

STATEMENT OF THE CASE

I. Facts of the Case

On August 31, 1971, several agents of the Tennessee Bureau of Criminal Identification, along with officers of the Tennessee Highway Patrol and members of the Lewis and Lawrence County Sheriffs' Departments, participated in a raid at the religious community where Appellants were living. They confiscated the marihuana plants they found growing there and arrested Appellants Wilbur Jordan, Brandon Lerda, and Dane Culbertson in the vicinity of the plants, and Appellant Stephen Gaskin in his home. All four persons arrested admitted to

growing marihuana and explained that marihuana was a Holy sacrament and a central part of their religion. [1]

On November 11, 1971, the Appellants were convicted in the Criminal Court of Lewis County under Section 52-1432 (a)(1)(F) of Tennessee Code Annotated for manufacture (cultivation) of marihuana, and sentenced to one to three years in the State Penitentiary for Stephen Gaskin and Dane Culbertson, and one year in the State Penitentiary for Wilbur Jordan and Brandon Lerda.

II. How the Federal Question was Presented

The Appellants presented a pretrial Motion to Dismiss to the Criminal Court of Lewis County, claiming that the Tennessee Drug Control Act of 1971 is unconstitutional as it applies to them because it unreasonably interferes with the free exercise of their religious beliefs guaranteed by the First Amendment to the United States Constitution; unreasonably interferes with their right to privacy guaranteed by the Ninth Amendment to the United States Constitution; imposes "cruel and unusual punishment" against which the Eighth Amendment to the United States Constitution protects; and by classifying marihuana as a substance to be controlled in the same manner as dangerous drugs does not provide a rational classification and denies "equal protection of the law" guaranteed by the Fourteenth Amendment to the United States Constitution. [2] This motion was denied.[3]

At the trial, Appellant Stephen Gaskin sought to offer testimony as to our religious practices and teachings. The testimony was curtailed through a series of objections and

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[1] See Lewis County No. 3948, Technical Record, pp. 113-118; pp. 145-146; pp. 226-230; pp. 250-253.

[2] See Lewis County No. 3948, Technical Record, Motion to Dismiss and Memorandum, pp. 362-363.

[3] See Lewis County No. 3948, Technical Record, pp. 87-88.

rulings in which the court determined we had a religious defense but arbitrarily limited that defense. [4]

The Appellants presented a Motion for a New Trial to the Criminal Court of Lewis County, claiming that the judge erred in denying their pretrial motion to dismiss; and that the judge unduly restricted Stephen Gaskin's sworn testimony as to the religious beliefs of our community, and his past and present character, and foreclosed from the jury the consideration of whether we hold the belief honestly and in good faith that marihuana is a Holy sacrament and a central part of our religion, which denied the Appellants "due process of law" and a fair trial guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. [5] This motion was denied. [6]

The Appellants appealed their conviction to the Supreme Court of Tennessee [7] who determined in an opinion published on February 5, 1973 that the assignments of error were without merit, and affirmed the judgment of conviction of the Lewis County Criminal Court. [8]

The Appellants then appealed to the Supreme Court of the United States who dismissed the appeal for want of a substantial federal question on October 14, 1973. [9]

The Appellants entered the Tennessee State Penitentiary at Nashville on February 22, 1974.

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[4] Lewis County No. 3948, Technical Record, pp. 238-257.

[5] *Ibid.*, Motion for a New Trial, pp. 364-366; pp. 319-325.

[6] *Ibid.*, p. 325.

[7] *Ibid.*, Brief, Assignment of Errors, and Argument in the Supreme Court of Tennessee, pp. 369-390.

[8] *Ibid.*, Opinion, Supreme Court of Tennessee, pp. 401-414; and set forth in Appendix B.

[9] Decision of Supreme Court of the United States, set forth in Appendix B.

The Appellants presented a Petition for Writ of Habeas Corpus in the Criminal Court of Davidson County Division One, No. 6888, and a Petition for Post Conviction Relief in the Circuit Court of Lewis County, No. 1532 [10] These petitions presented the constitutional questions discussed above. Both Courts dismissed the petitions without granting any relief. [11]

On the basis that they had exhausted all of their available state remedies and they were still being denied fundamental Constitutional rights, the Appellants also presented a Petition for Writ of Habeas Corpus, discussing the Constitutional questions, to the United States District Court for the Middle District of Tennessee, Nashville Division, No. 74-299-NA-CV. The District Court dismissed this petition on July 19, 1974, and the Appellants appealed to the United States Court of Appeals for the Sixth Circuit, Case No. 74-2094. The Court of Appeals, on July 23, 1975, determined that this appeal was without merit.

The Appellants continued seeking relief in the State Court system by presenting an Appeal from Dismissal of Petition for Post Conviction Relief to the Court of Criminal Appeals of Tennessee. [12] This Court affirmed the dismissal of the petition by the Circuit Court of Lewis County, determining that the questions presented had been previously determined. [13]

The Appellants then presented a Petition for Writ of Certiorari to the Supreme Court of Tennessee to review the decisions of the Circuit Court of Lewis County and the Court of Criminal Appeals of Tennessee. [14]

[10] Lewis County No. 1532, Technical Record, Petition for Post Conviction Relief and Memorandum.

[11] *Ibid.*, Circuit Court of Lewis County Court Memorandum and Order, set forth in Appendix A.

[12] Lewis County No. 1532, Technical Record, Brief, Assignment of Error and Argument, in the Court of Criminal Appeals of Tennessee

[13] *Ibid.*, Opinion, Court of Criminal Appeals of Tennessee, set forth in Appendix A.

[14] *Ibid.*, Petition for Writ of Certiorari to the Supreme Court of Tennessee.

On November 10, 1975, the Supreme Court of Tennessee decided that the Court of Criminal Appeals had correctly dealt with the issues and denied the Petition for Writ of Certiorari.[15]

Appellants Wilbur Jordan and Brandon Lerda were released from prison in November, 1974. Appellants Stephen Gaskin and Dane Culbertson were released from prison in January, 1975 and released from parole on January 28, 1976.

THE QUESTIONS ARE SUBSTANTIAL

The Constitutional questions presented here are not mooted even though the Appellants are no longer in prison or on parole because they now have a criminal record and the courts have taken away their good name and classified them criminals, convicts, and felons. Also the Constitutional questions still persist. We still consider marihuana a Holy sacrament and a central part of our religion and we still consider The Tennessee Drug Control Act as it applies to marihuana to be an unconstitutional law. See *Sibron v. New York,* 392 U.S. 40, 88 S.Ct. 1889 (1968); *Parker v. Ellis,* 362 U.S. 574, 80 S.Ct. 909 (1960); *Pollard v. U.S.,* 352 U.S. 354, 77 S.Ct. 481 (1957).

In response to our first Jurisdictional Statement, *Gaskin v. State,* No. 72-1718, October Term, 1973, dealing with the questions we are presenting, the United States Supreme Court dismissed our appeal for want of a substantial federal question. The criteria for a federal question to be unsubstantial are that the question is "obviously without merit" or that "its unsoundness so clearly results from the previous decisions of the Supreme Court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy." *Levering and Garrigues Co. v. Morrin,* 287 U.S. 590 (1932).

[15] Lewis County No. 1532, Technical Record, Order of the Supreme Court of Tennessee, set forth in Appendix A.

Marihuana is firmly implanted in the consciousness of America. In a news release dated February 13, 1973, the National Commission on Marihuana and Drug Abuse indicated that 26 million Americans have tried marihuana and 13 million Americans continue to use it. In 1973, more than 400,000 persons, mostly young people, were arrested for marihuana possession. The estimated cost to make and process these arrests is 600 million tax dollars. 81% of persons arrested for marihuana-related crimes have never been convicted of any crime in the past and 91% have never been convicted of a drug-related crime.[16]

The Domestic Counsel Drug Abuse Task Force submitted a White Paper on Drug Abuse to the President in September, 1975 in which they noted that marihuana was the most widely used illegal drug and that rates of marihuana use have been rising steadily over recent years. An estimated 25 - 30 million people (20% of the general population) over the age of 11 have used marihuana at least once, and use is encountered in nearly all population groups. Over 40% of those who have ever used marihuana are current users (10 - 12 million people), and at least half the current users use it at least once a week.[17] The Task Force pointed out the widespread recreational use of marihuana and the relatively low social cost associated with this type of use and recommended that enforcement efforts and treatment facilities for drugs other than marihuana should be given priority.[18]

The following organizations have recommended the decriminalization of personal use of marihuana: The National Commi-

[16] *Ravin v. State,* (Alaska Supreme Court, May 27, 1975) File No. 2135, p. 32, quoting statistics of the National Commission on Marihuana and Drug Abuse.

[17] The Domestic Council Drug Abuse Task Force, White Paper on Drug Abuse, September, 1975, pp. 25-27.

[18] *Ibid.,* pp. 25, 70.

sion on Marihuana and Drug Abuse, the National Institute of Mental Health, the American Medical Association, the American Public Health Association, the American Bar Association, the American Civil Liberties Union, the Los Angeles County Grand Jury, the National Advisory Commission on Criminal Justice Standards and Goals, the National Council of Churches, the National Educational Association, the Consumers Union, and the National Conference of Commissioners on Uniform State Laws (this group drafted the Uniform Controlled Substances Act which provided the model for the 1971 Tennessee Drug Control Act and the drug laws in 34 other states).

The National Commission on Marihuana and Drug Abuse in its first report (1972) recommended the following changes in existing state laws:

POSSESSION IN PRIVATE OF MARIHUANA FOR PERSONAL USE WOULD NO LONGER BE AN OFFENSE.

DISTRIBUTION IN PRIVATE OF SMALL AMOUNTS OF MARIHUANA FOR NO REMUNERATION OR INSIGNIFICANT REMUNERATION NOT INVOLVING A PROFIT WOULD NO LONGER BE AN OFFENSE.[19]

We believe that this recommendation is lacking only in that it does not allow a person to obtain marihuana without condoning or aiding in the commission of a felony. Allowing the cultivation of marihuana for personal use would create a respectable way of obtaining it.

In its second report (1973), the National Commission on Marihuana and Drug Abuse reaffirmed their conclusions and recommendations of their first report and stated:

> The risk potential of marihuana is quite low compared to the potent psychoactive substances (narcotics, stimulants, depressants, etc.), and even its widespread consumption does not involve the social cost

[19] First Report of the National Commission on Marihuana and Drug Abuse, 1972. *Marihuana: A Signal of Misunderstanding*, p. 154.

> now associated with most of the stimulants and depressants. . . . The Commission regrets that marihuana's symbolism remains so powerful, obstructing the emergence of a rational policy.[20]
>
> There are also moral questions surrounding the exploration of consciousness. Western culture has stressed rational analysis and synthesis as the most valid form of experience and denigrated other forms of consciousness, such as the drug-induced "high." Yet the heritage of the world's major religions is rich with the experiences of prophets, seers, saints, and mystics.[21]
>
> Users of hallucinogenic drugs have reported religious or mystical experiences. These experiences cannot be dismissed simply by dogmatic refusal to examine the evidence; . . .[22]

In October, 1973, the State of Oregon, and in 1975, the States of Alaska, Colorado, California, Maine, and Ohio passed laws discarding jail penalties for possession of a small quantity of marihuana, making such possession the legal equivalent of a traffic offense that is enforceable by a citation instead of an arrest.

Three marihuana decriminalization plans are currently before Congress, two bills sponsored by Senator Javits and Senator Koch and one bill sponsored by Senator Hart.

We do not believe any individual or court could honestly

[20] Second Report of the National Commission on Marihuana and Drug Abuse in America: *Problem in Perspective*, pp. 224-225.

[21] *Ibid.*, p. 393.

[22] *Ibid.*, p. 394.

look at our first Jurisdictional Statement[23] and the facts about marihuana and consider the questions we presented to be "obviously without merit." Also, there have been no previous decisions of the United States Supreme Court that show the unsoundness of these questions.

We are a Church and religious family community of 853 people (including 165 married couples) of all ages, races, and backgrounds, living on a 1,750 acre farm in Summertown, Tennessee. We have 286 children, 150 born on the Farm and 90 attending our state-approved school. We hold all our possessions in common, as described in the Book of Acts.[24] We have a book publishing company, a record company, a trucking company, a farming operation, and do construction and other types of labor to support ourselves. We have chartered a charitable organization, PLENTY, to help people who need help anywhere in the world. The way we are living and what we are doing is trying out a philosophy to see if it works—trying out a religion and a way of life to see if it really functions.

One of the Appellants, Stephen Gaskin, is the pastor of our Church. He is a man of exemplary moral character. In addition to counseling the folks in our community, he counsels many of our neighbors, and people all over the world. He is the spiritual teacher for thousands of people throughout the world. He speaks regularly to people in churches, colleges, community centers, medical schools, fraternal and professional organizations, tions, doctors' and businessmen's groups, and has been in the

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23 We published our first Jurisdictional Statement along with other relevant material in a book called *The Grass Case, Defense for the Religious Use of Marihuana Submitted to the United States Supreme Court by Stephen and the Farm Legal Crew.* We have thus far sold about 5,000 copies. We are lodging 9 copies of this book with the Clerk of the United States Supreme Court so that the Justices may examine it.

24 "And all that believed were together and had all things common; and parted them to all men, as every man had need." *The Book of Acts,* 2:44-45, King James Version of the *Bible.*

newspapers and magazines and on radio and television all over the country. He has talked to thousands and thousands of people, giving free lectures throughout this country and in Europe.

Stephen stresses a basic belief in God, non-violence, absolute truth, work, sanity, and healthy babies. He has been a major influence in steering young people away from hard drugs, violence, and welfare. For years, his has been the strongest, clearest, and most effective voice for peace among a whole generation.

The other Appellants were living on the community at the time of the arrests as students of Stephen and as religious men and good citizens of high moral character.

For these Appellants to have had to go to prison and to now be considered criminals makes no sense and discredits the rationaltiy and justness of the law.

There seems no clearer instance in which punishment for the infraction of a law is more harmful than the crime, or of laws more detrimental to the fabric of society than the present marihuana laws. They label otherwise law-abiding citizens as criminals for hurting no one, not even themselves. They invade the right of privacy. They promote disrespect for the law. They create an illicit market with high tax-free profits which encourages organized crime and corruption of police and local officials. They are used to harass some people. They distract the police from the problems of most concern. They create a continuing need to increase expenditures to deal with the mounting problems created by the laws themselves. See 2 Con. D.Pr. 3, at 27, 28 (1973).

The Indian Hemp Drugs Commission (1894), the Panama Canal Zone Military Investigations (1916-1929), the LaGuardia Committee (1939-1944), the Advisory Committee on Drug Dependence of the United Kingdom (1968), the Canadian Govern-

ment's LeDain Commission (1970), the American Public Health Association's National Institute of Mental Health, the Consumers Union (1972, 1975), the National Commission on Marihuana and Drug Abuse (1972, 1973) and other investigating bodies have reached similar conclusions based on modern scientific evidence—marihuana is not a narcotic, and its use does not lead to physical addiction or dependence; marihuana does not cause any physical damage or disturbances of bodily processes; marihuana does not cause genetic defects or chromosome damage; marihuana does not cause crime or aggressive behavior; marihuana does not lead to the use of hard drugs (heroin, amphetamines, barbiturates, etc.); marihuana does not cause insanity; marihuana is not a danger to public health and safety; the existing social and legal policy is out of proportion to the individual and social harm engendered by use of marihuana.[25]

A study commissioned by the United States Department of Health, Education, and Welfare to obtain controlled clinical evidence about the effects of chronic use of marihuana was carried out on the island of Jamaica in 1972. The study pointed out that Jamaicans smoke considerably heavier doses than American marihuana smokers. In many cases the marihuana smokers were the children and grandchildren of persons who smoked marihuana and were exposed to marihuana before birth, during infancy, childhood, adolescence, and adult life. Dr. Marigold J. Thorburn of the University of the West Indies studied the chromosomes of the marihuana smokers and found they were in good condition, showing slightly fewer abnormalities than were found in the control non-smokers group, though the difference was not statistically significant. Also, there was no evidence to suggest any brain damage.[26]

[25] The First Report of the National Commission on Marihuana and Drug Abuse: *Marihuana: A Signal of Misunderstanding* (1972), pp. 56, 57, 76, 84, 85, 87, 88, 89, 90, 167; Edward M. Brecher and the Editors of Consumer Reports, *Licit and Illicit Drugs*, Little, Brown, and Company, Boston and Toronto (1972), p. 45.

[26] *Effects of Chronic Smoking of Cannabis in Jamaica*, submitted to the Department of Health, Education, and Welfare's National Institute of Mental Health, March, 1972; *Medical Tribune and Medical News*, Vol. 14, No. 39, October 17, 1973; *Consumer Reports*, Vol. 40, No. 3, March, 1975, "Marihuana: The Health Questions."

We don't use tobacco or coffee or alcohol. We don't take any speed drugs, like dexedrine, benzedrine, methedrine, or ritalin. We don't use any of the barbiturates, or heroin or cocaine or morphine or sleeping pills, or anything derived from any of these things. We recognize that those things block you off from what's happening out there, and they're self-indulgent and addictive. We don't use LSD or chemical psychedelics. All those things are different than marihuana and we have apprised thousands of people of that difference. In not recognizing this difference the legislatures and the courts are creating a disrespect and discredibility in the justness of the law while sending thousands of people to prison who have done no moral wrong and have not harmed themselves or society. In educating people to this difference we are not a threat to society but a help to society.

There is no rational basis in a free society for denying the public access to a substance with no established health hazards.

We have been pursuing our Constitutional rights in every way possible because we believe a sense of justice is innate in everyone, that everyone understands the concept of justice, and everyone can agree upon what is just. If any of the Courts to whom we have presented our case made a careful and impartial consideration of our religious and other Constitutional rights, the specific circumstances involved, and the character and reputation of our community and the individuals accused, or just recognized that everything we have been saying is the truth, they would have arrived at a fair and just result and not the irrational and unnecessary situation that has resulted.

We don't believe that the Constitution and the Law is just a relativistic poker game with the accepted view being the result of who can bluff the best, rather than what is self-evidently right. All the things that can possibly happen to mankind have happened time and time again over the last hundreds of thou-

sands of years. All those things have been figured out so many times that if we trust our most honest and basic impulses—impulses that tell us things like this person is a nice person or that person has some kind of lust or anger in him that makes him scary—we can know what to do in any situation and we can know what is fair and right.

Since the Appellants' arrest, our defense has been that we are a *bona fide* religion and that we use marihuana as a sacrament. It was our community agreement to grow the marihuana. We grew it as we were growing our other crops, for a winter supply. We did not want to be involved in sales or involve anyone outside our community in the process of securing it. Our growing of marihuana represented no danger to society.

Throughout our Constitutional history, the individual's right to choose his religious beliefs and practices has been protected. Free exercise of religion is afforded Constitutional priority over all but "compelling state interests" because of its vital significance to the individual and to society. Upon the State is imposed the burden of demonstrating a compelling state interest.

> It must appear either that the state does not deny the free exercise of religious belief by its requirement or that there is a state interest of "sufficient magnitude" to override the interest claiming protection under the free exercise clause. *Wisconsin v. Yoder*, 406 U.S. 205, 92 S. Ct. 1526, at 1532 (1972).

In protecting the free exercise of religion, the framers of the Constitution preserved man's opportunity to know and experience universal truth, unless the means he chooses interferes with the public safety, peace, and good order. See *Reynolds v. United States*, 98 U.S. 145 (1878). The spiritual communion we find through marihuana is the essence of religious experience and does not interfere with the public safety, peace, and good order.

In *Wisconsin v. Yoder*, *supra*, this Court stated:

> The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion. *Supra*, at 1533.

In *Sherbert v. Verner*. 374 U.S. 398, 83 S. Ct. 1790 (1963), the Court sustained the understanding of the free exercise clause it expressed twenty years earlier in *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178 (1943).

> It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive Constitutional area, only the gravest abuses, endangering paramount interests give occasion for permissible limitation, *Sherbert v. Verner*, *supra*, at 406.

and

> "(A)ny attempt to restrict those liberties must be justified by *clear public interest*, threatened not doubtfully or remotely, but by *clear and present danger.*" *Thomas v. Collins*, 323 U.S. 516, 65 S. Ct. 315 (1945).

When the religious freedom guaranteed by the First Amendment is at stake, there is no place for the judicial deference ordinarily paid to legislative judgment. Upon the judiciary rests the responsibility of preserving religious freedom by closely scrutinizing the legislative rationale to determine whether or not the prohibited activity creates a grave danger, and, if not, whether the legislative objective could be substantially achieved without infringing upon religious freedom.

In *People v. Woody*, 61 Cal. 2d 716, 394 P. 2d 813 (1964), the Supreme Court of California held that the State could not prevent the members of an Indian tribe from using peyote (a controlled substance listed under Schedule I of the 1971 Tennessee Drug Control Act), in the free exercise of their religious beliefs. The Court found that the defendants used peyote in a

bona fide pursuit of religious faith, and that there was no state interest sufficient to override the sacramental use of peyote. Colorado, Iowa, Nevada, New Mexico, South Dakota, Texas, Wisconsin, Wyoming, Montana, and Arizona have also exempted religious use of peyote from their narcotics laws.

We believe the California Supreme Court in *People v. Woody*, *supra,* applied the proper test regarding a religious sacrament:

> We have weighed the competing values represented in this case on the symbolic scale of constitutionality. On the one side we have placed the weight of freedom of religion as protected by the First Amendment; on the other, the weight of the State's compelling interest. Since the use of peyote incorporates the essence of religious expression, the first weight is heavy. Yet the use of peyote presents only slight danger to the state and to the enforcement of its laws; the second weight is relatively light. The scale tips in favor of the constitutional protection. *Supra* at 727.

Society has the right to protect itself from dangerous, destructive, or otherwise anti-social behavior.

> It is true that actions of individuals, even when religiously based, are often subject to regulation by the states in the exercise of their undoubted power to promote the health, safety, and general welfare. . . But to agree that religiously grounded conduct must often be subject to the broad police power of the State is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability. *Wisconsin v. Yoder, supra,*1535.

Our religious use of marihuana is not inimical to the peace, good order, and morals of society, and does not harm ourselves.

Our religious use of marihuana does not present a "substantial" and "compelling state interest" in the face of a "clear and present danger" so grave as to "endanger paramount public interests."

No Court that we have come before has ever treated us as a real religion with legitimate Constitutional questions. The opinion of the Tennessee Supreme Court in *Gaskin v. State*, 490 S.W. 2d 521 (1973) indicates to us that the justices made the assumption that we violated the law and therefore we must be guilty, and proceeded to apply the legal principles that would justify that result.

In our post-conviction relief and habeas corpus proceedings and appeals, the courts have relied on *Gaskin v State*, 490 S.W. 2d 521 (1973), to show that the allegations of the unconstitutionality of the Tennessee Drug Control Act, as applied to Appellants, have been previously determined.

We feel that in pursuing our Constitutional rights, the Courts have put us on a loop-the-loop which keeps us going around in circles and ignores the fact that the Supreme Court of Tennessee was unfair in *Gaskin v. State*, *supra,* and did not follow the proper guidelines that must be used in determining whether a religious practice must be curtailed.

The State must show that our religious practices are in some way dangerous to society or to ourselves, or it can have no legitimate interest in regulating our practices. The State has not made such a showing.

Only after the State has shown that our religious practices are in some way dangerous to society or to ourselves, can the State show that it has a "substantial interest", a "compelling state interest", a "clear public interest threatened by clear and present danger" in regulating our religious practices.

In *Gaskin v. State*, *supra,* the Tennessee Supreme Court bases its opinion on *Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244 (1878); *Harden v. State*, 188 Tenn. 17, 216 S.W. 2d 708 (1949); and *Davis v. Beason*, 133 U.S. 333, 10 S. Ct. 299, 33 L. Ed. 637 (1890).

The *Reynolds* case was an 1898 decision which, while enunciating a relevant legal principle, presented an unenlightened and prejudicial view of religion, linking religion to such bizarre and criminal practices as to shock one's conscience. The Tennessee Supreme Court, by including the quote from *Reynolds* describing these bizarre and criminal practices, implies that our religion and religious practices are of the same order as these practices.

Similarly, in *Harden v. State, supra,* the Court implies a comparison of our religious practices with the obviously dangerous practice of handling poisonous snakes.

Religion isn't just an arbitrary thing put together to follow some wierd rules. Religion is a phenomenon that lives in the human heart and human mind. If religion is compassionate, if it doesn't harm anyone, if it excludes no one, if it helps you out in the here and now, if it is something you can live by, if it is something that will be there when it gets heavy, if it is something for real and doesn't cost money, that's how you can tell religion—real religion. Religion isn't supposed to be something that gives you pie in the sky. If something is going to be a help to you and to mankind, it will make your life change; it will make things work better for you, it will give you better friends, it will make your kids talk straight to you and look you in the eyes. There are levels of experience that man is heir to, that man is supposed to experience, and these are spiritual things. One of the highest and Holiest religious experiences that is available to mankind is to get outside your head for a couple of seconds and realize the universe doesn't revolve around you. In times when there is a lot of material success in the world, folks sometimes forget to tune into those finer things. But people have certain spiritual needs that must be served, so religions are created to serve people. Somehow religion has to serve a human being's needs. It has to help him in birth; it has to help him in growing up; it has to help him in marriage; it

has to help him in death. Every religion that serves these functions is a true religion and people can know enough to be able to tell a real religion on their own knowledge.

> I must ever believe that religion substantially good which produces an honest life, and we have been authorized by one whom you and I equally respect, to judge of the tree by its fruit.
>
> —Thomas Jefferson, 1814

The Tennessee Supreme Court relies on the *Reynolds* decision and *Davis v. Beason*, 133 U.S. 333, 10 S. Ct. 299, (1890), to provide the proper rules of law:

> Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. *Reynolds v. U.S., supra.*

We agree with this statement, but point out that the free exercise of religion is afforded constitutional priority over all but "compelling state interests" because of its vital significance to the individual and to society, as we more fully discussed previously.

The Tennessee Supreme Court makes no mention of the compelling state interest test. Instead they quote from *Davis v. Beason, supra:*

> It was never intended or supposed that the amendment (First Amendment) could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order, and morals of society.

We agree with the Tennessee Supreme Court that society has the right to defend itself from dangerous, destructive, or otherwise antisocial behavior, but our religious use of marihuana is not inimical to the peace, good order, and morals of society, and does not harm ourselves.

In *Ravin v. State*, (Alaska, Sup. Ct., May 27, 1975), File No. 2135, the Supreme Court of Alaska concluded that its citizens have a basic right to privacy in their homes under Alaska's Constitution which encompasses the possession and ingestion of marihuana in a personal, non-commercial context in the home unless the State can meet its substantial burden and show that proscription of possession of marihuana in the home is supportable by achievement of a legitimate state interest.

There has never been any conclusive evidence that the use of marihuana is harmful, either to the user or to society. The Court in *Ravin* notes that certain researchers point to possible deleterious effects from the use of marihuana but points out:

> In almost every instance of reports of potential danger arising from marihuana use, reports can be found reaching contradictory results. It appears that there is no firm evidence that marihuana as presently used in this country is a danger to the user or to others. But neither is there conclusive evidence that it is harmless.

In the March, 1975, issue of "Consumer Reports," Volume 40, No. 3, the Consumers Union examined the allegations about marihuana based on scientific studies in an article entitled, "Marihuana: The Health Questions," and found that when a research finding could be easily checked, an allegation of adverse marihuana effects is relatively short-lived. No damage is found and after a time the allegation is dropped. If the test procedure is difficult, repeat studies have not been made. So these allegations of damage continue to be cited in the scientific literature and in the lay press until they are eventually replaced by fresh allegations of marihuana damage.

The Court, in *Ravin*, concluded that no adequate justification was shown for the state's intrusion into the citizen's right of privacy by its prohibition of possession of marihuana by an adult for personal consumption in the home. The State must

demonstrate a need based on proof that the public health or welfare will in fact suffer if the controls are not applied. *Ravin v. State*, *supra*, at 40.

Justice Levinson, in his dissent in *State v. Kantner*, 493 P. 2d 306 (Hawaii Sup. Ct. 1972), noted that the State failed to show any harm to the user or others from the private, personal use of marihuana, so that the statute infringed on the right to personal autonomy.

> The experiences generated by the use of marihuana are mental in nature and among the most personal and private experiences possible. So long as conduct does not produce detrimental results, the right of privacy protects the individual's conduct designed to affect these inner areas of the personality. *State v. Kantner*, dissent, *supra* at 315. See Justice Kavanagh's opinion in *People v. Sinclair*, 194 N.W. 2d 878 (Mich. Sup. Ct. 1972).

Why the Farm is here and why it is doing like it is, is because of the love of God. What gets us together and makes it possible for us to do what we are doing is the experiences we share of being together in Holy communion, of sometimes getting our heads clear enough for awhile to have flashes of open mind, to be telepathic, to be able to see into each other's mind and into each other's soul, which you can sometimes do if you get really honest and pure and clean. And you learn that there is some kind of medium that exists between people so that your head is not the limit of your consciousness but that you actually share space and interpenetrate with other people. Human beings are electro-chemical organisms and the part of us that interpenetrates is the field that surrounds us as electro-chemical organisms.

Mankind has known that mankind is telepathic for thousands of years, but it is so delicate a thing to bring about. Telepathy is the basis of most of the miracles in most of the religions that report that sort of thing.

We believe in using marihuana as a sacrament because when used religiously, it enhances the value of truth. It opens you up and leaves you compassionate, which then allows you to be telepathic. Using marihuana you can find open religious experience and be one step closer to God than open Bible, which was a step closer to God than having a Bible of Latin that only the priesthood understood. You can go to the experience and learn it for yourself.

Marihuana is not a panacea. It is not guaranteed. The thing that is miraculous is that sometimes under very favorable circumstances somebody connects and really understands. Marihuana can give you a referent for the word *revelation* and provide you a referent for what another level of consciousness is. Once you discover that other level of consciousness, it is impossible to stay there with any degree of permanency unless you develop a certain amount of courage and a certain amount of moral structure, and live right. It takes character and integrity to get high on marihuana.

Using marihuana or meditating or having something heavy happen to you, like suddenly discovering that a member of your family died, or seeing your baby born, or falling in love, or seeing a good sunset can trigger you off and charge your field. When your field is charged it raises your consciousness so that you are able to see something that is really going on that you might not have been able to see in another state, and that can be a holy vision. The charged field surrounding a human being in a high level of consciousness can be perceived by sight and by feeling.

Being *stoned*,[27] the very sensation of *stonedness*, can be sent as a telepathic message. The contact high is when someone can feel stoned just by coming into contact with someone who is stoned. It's what's supposed to happen to you in church when you have communion.

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[27]Charged with spiritual energy, which raises the consciousness to new levels of perception.

We believe the existing legislation against marihuana is legislation against a state of mind or plane of existence which cannot be proven or disproven by any instrument of state or science. We don't believe you can legislate something that goes on in people's minds or in a plane which the government does not enter. The State can demonstrate no compelling interest in this plane by reason of material inability and Constitutional proscription.

We know that marihuana did not give us any new senses that God had not already given us and that our perception of these planes at all proves the rightness and appropriateness of our access to them in and of itself. We believe that the United States Constitution protects our freedom of access to all spiritual planes given to us as our birthright.

Respectfully submitted,

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The Farm
Summertown, Tennessee 38483-

Jerry H. Summers
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Chattanooga, Tennessee 37403
Member of the U.S. Supreme
Court Bar

For the Appellants.

APPENDICES

APPENDIX A

OPINIONS OF THE COURTS BELOW

STEPHEN GASKIN,
WILBUR H. JORDAN,
BRANDON LERDA and
DANE DEXTER CULBERTSON

VS:	:	Civil Docket No. 1532
	:	In the Circuit Court of
STATE OF TENNESSEE	:	Lewis County,
	:	Tennessee

COURT'S MEMORANDUM

In this cause the petitioners, who were erroneously shown as defendants in the original petition, having filed their petition for post conviction relief, the undersigned was designated to hear the matter by the Chief Justice. The State filed a motion to dismiss and also filed its answer.

Upon the hearing of the motion to dismiss, the petitioners were allowed to file an amendment to their original petition and the cause was then heard on the motion to dismiss, the State being represented by the Hon. Elmer Davies, Attorney General and the petitioners being represented by the Hon. Joel Kachinsky, a privately retained attorney. After examining the record of the original case and hearing argument of counsel the Court finds that the grounds stated in paragraphs (a), (b), (c), (d), (e) of the original petition and grounds (a), (b), (c), (d), (e), (f) and (g) of the amended petition have been waived or have been previously determined. The petitioners concede in their original petition that grounds (a), (c), (d), (e) and (f) were presented to the trial court and the State Appellate Courts; that ground (b) was presented to the United States Supreme Court. However, this Court finds that ground (b) was likewise submitted to the trial court in substance in defendants' motion to dis-

miss filed November 3, 1971, although the Fifth and Fourteenth Amendments were not specifically designated. The allegation that their constitutional rights granted by the Fifth and Fourteenth Amendments were violated is set out in petitioners' motion for a new trial and acted on by the trial court prior to petitioners' appeal. The petitioners concede in the amendment to the original petition that grounds (a), (b), (c), (d), (e), (f) and (g) had previously been presented to the trial court.

The State's motion to dismiss was sustained as to these grounds in the original and amended petition and upon an evidentiary hearing being had the Court finds as follows:

As to ground (g) of the original petition: There is no dispute in the record that the marihuana was owned by these petitioners together with others not here involved. The mere fact that these other people, who purportedly had an interest in the marihuana, were not prosecuted would in no way make these petitioners less guilty.

As to ground (h) of the original petition: It was proper for the Legislature to make the manufacture or the growing of marihuana a felony and the mere possession a misdemeanor. Such is a reasonable classification.

As to ground (i) of the original petition: There was no showing that there was a great disparity in the punishment imposed for the manufacture of marihuana in the various circuits. The only evidence presented on this ground was the affidavit of one Joe Pugh, who stated that his sentence for possession of a small quantity of marihuana of 11 months and 20 days was suspended by the trial judge in an adjoining circuit. It should be noted that Mr. Pugh claimed that the marihuana in his possession originally came from the farm occupied by the petitioners.

As to ground (h) of the amended petition: The petitioners have failed to establish that they did not receive a fair trial as a result of the action of the news media and especially the action

of WLAC-TV. The petitioners made no motion for a change of venue. In fact it appeared that the petitioner Gaskin preferred that the case be tried in Lewis County. He stated that he directed his attorney to accept the first twelve jurors but that the attorney disobeyed him and challenged about 25 jurors, that he would have fired his attorney if he had known that he could do so; that he did not know whether his attorney had exhausted all the challenges allowed. The record reflects that all four petitioners had the same defense counsel and therefore would have a total of 32 peremptory challenges. While the petitioner totally failed to establish that they did not receive a fair trial as a result of this alleged publicity it should be further noted that this is the first time that this question has been raised. These petitioners made no such complaint in any pretrial motion, in their motion for a new trial, or in their appeal to the Appellate Courts.

It is, therefore, the opinion of this Court that the grounds assigned by petitioners for post conviction relief have been waived or have been previously determined. See Sections 40-3811 and 40-3812, Tennessee Code Annotated.

Let the petition be dismissed and petitioners will be allowed an appeal with the full 90 days to file their bill of exceptions. Let a final order be entered in keeping with this Memorandum. The petitioners will pay the costs.

(s) James L. England

James L. England, Circuit Judge
Designated pursuant to Section 40-3802, T.C.A.

IN THE CIRCUIT COURT FOR LEWIS COUNTY, TENNESSEE

STATE OF TENNESSEE

VS. No. 1532

STEPHEN GASKIN, WILBUR H. JORDAN,
BRANDON LERDA and
DANE DEXTER CULBERTSON

ORDER

This case came on to be heard before the Honorable James L. England, Circuit Judge Designated pursuant to Section 40-3803, T. C. A., specially designated to hear this case, the petition for post conviction relief, Motion to Dismiss, and Answer to the State, testimony of witnesses in open court, argument of counsel, and the entire record in the case from all of which it appears to the Court that for the reasons set out in the Memorandum of the Court, which is hereby made a part of this order, that the petition for post conviction relief is not well taken, that the constitutional rights of the petitioners have not been violated, that the petition herein be and the same hereby is dismissed and the petitioners remanded to the Warden of the State Penitentiary for the completion of the remaining portion of their sentences.

Petitioners are allowed ninety (90) days to perfect their appeals.

James L. England
Judge

Decided May 31, 1974

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY, 1975

STEPHEN GASKIN,
BRANDON LERDA,
WILBUR JORDAN, AND
DANE CULBERTSON,
Petitioners,

V.

STATE OF TENNESSEE
Respondent

No. 1532
LEWIS CRIMINAL
Honorable James L. England,
Judge
(Manufacture of Marihuana)

FOR THE PETITIONERS:

Joel Kachinsky
Summertown, Tennessee

FOR THE RESPONDENT:

R. A. Ashley, Jr.
Attorney General
Nashville, Tennessee

William B. Hubbard
Asst. Attorney General
Nashville, Tennessee

Elmer Davies, Jr.
District Attorney General
Franklin, Tennessee

JUDGMENTS AFFIRMED

MARK A. WALKER, PRESIDING JUDGE

OPINION FILED:

JUNE 25, 1975

OPINION

By their petition for postconviction relief, the petitioners below, Stephen Gaskin, Brandon Lerda, Wilbur Jordan, and Dane Culbertson, challenge their convictions for manufacture of marijuana. After an evidentiary hearing, the trial judge filed his memorandum setting forth his findings of fact and conclusions of law. He found all of the grounds to be without merit and dismissed the petition. We agree and affirm the dismissal.

On direct appeal our Supreme Court affirmed the convictions in *Gaskin v. State*. Tenn., 490 S.W.2d 521, cert. denied 414 U.S. 886, 38 L.Ed.2d 133, 94 S.Ct. 221.

On their direct appeal and in this proceeding, the petitioners contend that the Tennessee Drug Control Act unconstitutionally interferes with the free exercise of religion guaranteed by the First Amendment to the United States Constitution. They say that the use of marihuana is a sacrament and a central part of their religion and the Drug Control Act violates due process of law; that the Act is legislation against a state of mind in which the State has no compelling interest; that it is not reasonably related to public health, safety and morals and violates equal protection of the law and that punishment under the Act is cruel and unusual.

The question of the constitutionality of the Act was decided on the direct appeal and these questions have been previously determined in *Gaskin v. State*, *supra*. The present allegations of unconstitutionality of the statute do not raise new grounds and have already been once litigated. They have been previously determined.

In this proceeding the petitioners now seek to attach the search and the seizure of the marihuana. This question was raised by their counsel at the trial but the record shows that the petitioners themselves determined not to appeal that issue but to confine the direct appeal to the constitutionality of the statute. The search and seizure question has been waived. TCA 40-3811-3812.

At the evidentiary hearing the trial judge limited the issues to the petitioners' claims to: (1) violation of the equal protection clause of the 14th Amendment of the United States Constitution by selective prosecution of them; (2) the Drug Control Act violates the 14th Amendment by making manufacturing of marijuana a felony while possession is only a misdemeanor; (3) disparity in sentencing in the different circuits in the state violates the equal protection clause of the 14th Amendment and (4) pretrial publicity (filming by a television crew of the arrest) violated due process and denied them a fair trial.

The trial judge found that the mere fact that other people, who purportedly had an interest in the marihuana, were not prosecuted would not make these petitioners less guilty. He further held that it was proper for the legislature to make manufacture of marihuana a felony and mere possession a misdemeanot. He found no proof of any great disparity of punishment in the various circuits.

The petitioners offered testimony showing that television and radio people came when the police arrived and interviewed petitioner Gaskin. They say the television film prejudiced them and the radio people misrepresented their life style. For the state a TBI agent testified the newsmen evidently learned from police radio calls of the impending arrest and came to the scene. At the trial the petitioners did not want to challenge any jurors although their attorney challenged a number peremptorily.

The trial judge found that the evidence failed to show that the petitioners had not received a fair trial as a result of the alleged publicity; that there was no motion for a change of venue and that this is the first time this question was raised.

We have held the Drug Control Act of 1971 as it applies to marijuana in all respects constitutional. See *Lee v. State*, Tenn. Cr.App., 498 S.W.2d 909.

All assignments are found to be without merit and are overruled.

The judgment is affirmed.

Mark A. Walker, Presiding Judge

CONCUR:
John A. Mitchell, Judge
William S. Russell, Judge

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STEPHEN GASKIN, ET AL., Petitioners,	)	
vs.	)	Lewis Criminal
STATE OF TENNESSEE, Respondent.	)	No. 1532

ORDER

Upon consideration of the petition, briefs, and the entire record in the cause, it is the judgment of this Court that the Court of Criminal Appeals has correctly dealt with the issues.

The petition for certiorari is denied at the cost of petitioners.

PER CURIAM

Filed November 10, 1975

APPENDIX B

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

(*Gaskin v. State of Tennessee*, 490 S.W.2d 521 (1973)

STEPHEN GASKIN, ET AL.	)	
V.	)	LEWIS CRIMINAL
STATE OF TENNESSEE	)	No. 3948

For Plaintiffs in Error:	*For the State:*
Stephen Gaskin	David M. Pack
Dane Dexter Culbertson	Attorney General
Wilbur Jordan	William B. Hubbard
Brandon Lerda	Assistant Attorney General
The Farm	J. Alonzo Bates
Route 1, Box 197-A	District Attorney General
Summertown, Tennessee	William D. Young, Jr.
	Ass't District Attorney General

OPINION

Stephen Gaskin, Dane Dexter Culbertson, Wilbur Jordan, and Brandon Lerda all were convicted in the Circuit Court of Lewis County of the manufacture of marihuana in violation of Chapter 163 of the Public Acts of 1971, now codified as Sections 52-1409 to 52-1448, inclusive, Tennessee Code Annotated, known as the Tennessee Drug Control Law. Gaskin and Culbertson each received a sentence of from one to three years and Jordan and Lerda each a sentence of one year in the penitentiary.

Section 52-1409 (m), T.C.A., defines "manufacture" as the "production, preparation, propagation, compounding,

conversion or processing of a controlled substance". Section 52-1422, T.C.A., includes marihuana as a controlled substance in Schedule VI. Section 52-1432 (F) provides that it is unlawful, unless authorized by the provisions of the statute, "for any person to manufacture, deliver, sell, or possess with intent to manufacture, deliver or sell, a controlled substance" and that such person "is guilty of a felony and upon conviction shall be imprisoned for not less than one (1) year nor more than five (5) years and in addition thereto may be fined not more than three thousand dollars ($3,000)." None of the four defendants has shown that he was authorized to manufacture marihuana.

Upon their motion for a new trial being overruled the defendants perfected their appeal to the Court of Criminal Appeals, but it appearing from their assignments of error that "the sole and single question for determination" on appeal is the constitutionality of Chapter 163 of the Public Acts of 1971, that court declined to take jurisdiction and transferred it to the Supreme Court.

The defendants were represented in the Circuit Court by competent counsel, but they perfected their appeal and filed their assignments of error and brief *pro se*. The defendant, Gaskin, made an oral argument at the bar of this Court on behalf of all the defendants.

None of the defendants has suggested that he is indigent and none contends that he did not, in fact, manufacture marihuana. Their effort to obtain a reversal of the Circuit Court's judgment of conviction is based altogether on their insistence that Chapter 163 of the Public Acts of 1971, as applied to them, violates rights guaranteed them under the Constitution of the United States.

The insistences of the defendants as presented by their four assignments of error are:

(1) The statute prohibiting the cultivation of marihuana unconstitutionally interferes with their right to the free exercise of religion guaranteed them by the First Amendment to the Constitution of the United States;

(2) The statute unconstitutionally interferes with their right of privacy guaranteed them by the Ninth Amendment to the Constitution of the United States;

(3) The punishment for the possession and manufacture of marihuana is cruel and unusual punishment, protected against by the Eighth Amendment to the Constitution of the United States; and

(4) The classification of marihuana with addictive and disabling drugs is an irrational classification, not reasonably related to public health, safety, and morals, and is too broad in its restrictions and violation of the defendants' rights under the Equal Protection and Due Process clauses of the Fourteenth Amendment to the Constitution of the United States.

Stephen Gaskin is the leader and teacher of a party of followers that in August of 1971 numbered from 350 to 360 persons according to his testimony. They left San Francisco on October 12, 1970, in a caravan composed largely, if not entirely, of buses. They spent the winter making their way across the country toward Tennessee. Gaskin had given religious lectures in San Francisco for several years and from time to time as the caravan moved eastward he gave lectures at various educational institutions. He had been a teacher of English and creative writing at San Francisco State College.

Upon their arrival in Middle Tennessee the party at first camped on land of the United States Corps of Engineers, near Donelson. They moved to Lewis County to a tract owned by a Mrs. Martin of Nashville who allowed them to use it. They spent the summer of 1971 on this property.

While they were on the Martin land in Lewis County local and state officers found marihuana plants under cultivation on the property. On August 31, 1971, they made a raid, cut and confiscated the marihuana and arrested Gaskin and the other defendants, who were members of a committee having charge of the production of marihuana. The trial and convictions resulted from this raid.

The defendant, Gaskin, testified that most of his adult followers used marihuana in their religious practices. He said:

> "Well we found that it's a way to meditation that helps us to pray and to understand our Creator and also it helps us to see the truth in our personal problems and in our interactions with each other and that when we have prayer we try to get as high as we can so that we all can have the best vision we can so we can see what's going on; it's a meditation thing, it's well substantiated by people in religion that the experience that you can have with marihuana is identical to the religious experience that you can have spontaneously without it."

(1) The defendants contend that Chapter 163 of the Public Acts of 1971 is unconstitutional as it has been applied to them in that it interferes with the free exercise of their religious beliefs guaranteed them by the First and Fourteenth Amendments to the Constitution of the United States.

In *Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244, the court affirmed the conviction of one tried for the statutory crime of bigamy. The defendant contended that the statute was unconstitutional because it interfered with the exercise of religion. Rejecting that contention the court said:

> "... Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to

> prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?
>
> "So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."

Harden et al v. State, 188 Tenn. 17, 216 S.W.2d 708 (1949), dealt with the constitutionality of Chapter 89 of the Public Acts of 1947, which made it "unlawful for any person, or persons, to display, exhibit, handle or use any poisonous or dangerous snake or reptile in such manner as to endanger the life or health of any person."

The defendants in that case had been convicted of handling poisonous snakes during the course of their religious services. They insisted that because of the constitutional guarantees of the free exercise of religion, the act could not be applied so as to prevent their handling of poisonous snakes in their services. The Court rejected this insistence and affirmed the convictions. In the opinion by Mr. Justice Tomlinson, the Court cited *Reynolds v. United States*, *supra*, and *Davis v. Beason*, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637 (1890). From the later opinion the following, which refers to the first amendment to the federal constitution, is quoted:

> "It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order, and morals of society."

The argument of the defendants that the statute as applied to them violates their rights under the First and Fourteenth Amendments to the Constitution of the United States is without merit.

(2) The defendants next contend .that the statute unconstitutionally interferes with their right of privacy guaranteed under the Ninth Amendment. The amendment here invoked simply provides that "the enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people." The defendants insist that the purpose of this amendment is to protect other rights than those enumerated in the Constitution and that the "possession and cultivation of marihuana for religious purposes are within these rights."

We cannot agree that this argument is sound.

(3) The punishment for the manufacture and possession of marihuana, the defendants insist, is cruel and unusual punishment and violative of the Eighth Amendment to the Constitution of the United States.

The punishment prescribed by the statute is imprisonment for from one to five years and fines not exceeding $3,000.00. In this case the jury imposed no fines and sentences of imprisonment in excess of the maximum. We do not consider that either the sentences provided in the statute or as imposed by the jury and the court were excessive and in violation of the constitutional rights of any of the defendants. *Hardin v. State* 210 Tenn. 116, 356 S.W.2d 595 (1962).

(4) The defendants contend finally that the classification of marihuana with addictive and disabling drugs is an irrational classification, not reasonably related to public health, safety and morals, and is too broad in its restrictions and violative of the Equal Protection and Due Process clauses of the Fourteenth Amendment to the Constitution of the United States.

We observe first that the defendants have made no effort to prove that marihuana is not a harmful substance which ought to be classified in the law in some manner other than as a dangerous drug or harmful substance. The General Assembly of Tennessee presumably acted in the exercise of sound discretion and with adequate knowledge when it dealt with marihuana in Chapter 163 of the Public Acts of 1971. In enacting the statute before us the General Assembly acted in the exercise of its police power to preserve the safety and morals of the public. *Motlow v. State*, 125 Tenn. 547, 145 S.W. 177, L.R.A. 1916F 177 (1911); *Arutanoff v. Metropolitan Government*, 223 Tenn. 535, 448 S.W. 2d 408 (1969).

The assignments of error are without merit. We overrule them and affirm the judgment of conviction of the Circuit Court.

(signed)
George F. McCanless, Justice.

Dyer, C.J., Chattin and Humphreys, JJ., and Wilson, Sp. J., concur.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

OCT 15 1973

Mr. Stephen Gaskin
The Farm
Route 1, Box 197-A
Summertown, Tenn. 38483

RE: GASKIN, ET AL. v. TENNESSEE,
72-1718

Dear Sir:

The Court today entered the following order in the above-entitled case:

The appeal is dismissed for want of a substantial federal question.

Very truly yours,

MICHAEL RODAK, JR., Clerk
By

Helen Taylor

Helen Taylor, (Mrs.)
Assistant Clerk

APPENDIX C

TENNESSEE STATUTES WE CONSIDER UNCONSTITUTIONAL AS APPLIED TO APPELLANTS

§ 52-1409 (m), Tennessee Code Annotated.–"Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, . . .

§ 52-1422, Tennessee Code Annotated.–Criteria and controlled substances for schedule VI. There is hereby established a schedule VI for the classification of substances which the commissioner of mental health upon the agreement of the commissioner of public health, upon considering the factors set forth in § 52-1410 (a) decides should not be included in schedules I through V. The controlled substances included in schedule VI are:

(1) Marihuana
(2) Tetrahydrocannabinols.

§ 52-1432, Tennessee Code Annotated.–(a) Except as authorized by § 52-1408–42-1448 (The Tennessee Drug Control Act of 1971), it is unlawful for any person to manufacture, deliver, or sell a controlled substance.

(1) Any person who violates this subsection with respect to: . . . (F) a controlled substance classified in schedule VI is guilty of a felony and upon conviction shall be imprisoned for not less than one (1) year nor more than five (5) years, and in addition thereto may be fined not more than three thousand dollars ($3,000).

(2) It may be inferred from the amount of controlled substances possessed by an offender, along with other relevant facts surrounding the arrest, that the controlled substance or

substances were possessed with the purpose of selling or otherwise dispensing. It may be inferred from circumstances indicating a casual exchange among individuals of a small amount of controlled substances that the controlled substances so exchanged were possessed not with the purpose of selling or otherwise dispensing them in violation of the provisions of § 1432 (a). Such inferences shall be transmitted to the jury by the trial judge's charge and the jury will consider such inferences along with the nature of the substance possessed when affixing the penalty.

. . . (b) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by § 52-1408–52-1448.

UNITED STATES CONSTITUTION

Amendment 1 – Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

Amendment 5 – . . . ; nor shall any person . . . nor be deprived of life, liberty, or property, without due process of law; . . .

Amendment 8 – Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 9 – The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment 14 - Section 1 – All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

RELEVANT TENNESSEE STATUTE

§ 40-3805 T. C. A. – **Grounds for relief.** Relief under this chapter shall be granted when the conviction or sentence is void or voidable because of the abridgement in any way of any right guaranteed by the Constitution of this State or the Constitution of the United States, including a right that was not recognized as existing at the time of the trial if either Constitution requires retrospective application of that right.

APPENDIX D

NOTICE OF APPEAL

IN THE SUPREME COURT OF TENNESSEE

STEPHEN GASKIN,	)	
WILBUR JORDAN, and	)	
BRANDON LERDA	)	
Petitioners in Error	)	
	)	
vs.	)	Lewis County Criminal
	)	No. 1532
STATE OF TENNESSEE	)	
Respondent in Error	)	

Notice of Appeal to the Supreme Court of the United States.

I. Stephen Gaskin, Wilbur Jordan, and Brandon Lerda, Petitioners in Error, are giving notice of an appeal to the Supreme Court of the United States from the final order of November 10, 1975, of the Supreme Court of Tennessee which affirmed the judgment of the Circuit Court of Lewis County, dismissing Petitioners' in Error *Petition for Post-Conviction Relief.*

This appeal is taken under 28 U.S.C. 1257(2).

Petitioners in Error were convicted for the manufacture of marihuana in violation of section 52-1432 (a)(1) of *Tennessee Code Annotated*. Stephen Gaskin was sentenced to one to three years in the state penitentiary. Wilbur Jordan and Brandon Lerda were sentenced to one year in the state penitentiary. After entering the penitentiary, Petitioners in Error filed a Petition for *Post-Conviction Relief.*

II. The Clerk will please prepare the complete record of this case for transmission to the Clerk of the Supreme Court of the United States.

III. The following questions are presented by this appeal:

1. The Tennessee State Courts erred in determining that the question of the constitutionality of the Tennessee Drug Act of 1971 as applied to Petitioners in Error (sections 52-1409 (m), 52-1422(1), 52-1432(a)(1)(F), and 52-1432(b) of *Tennessee Code Annotated*), had been previously determined by the Supreme Court of Tennessee in *Gaskin v. State*, 490 S.W. 2d 521 (1973), because Petitioners in Error did not receive a full, fair, and adequate hearing by the Supreme Court of Tennessee in *Gaskin v. State, supra.*

2. The Tennessee Drug Control Act of 1971 prohibiting the cultivation and use of marihuana in our religious practices unconstitutionally interferes with the "free exercise of religion" guaranteed by the First Amendment to the United States Constitution.

3. The Tennessee Drug Control Act of 1971 prohibiting the cultivation and use of marihuana is legislation against a state of mind which cannot be proven or disproven by any instrument of state or science. The State can demonstrate no compelling interest in this state of mind. The Ninth Amendment to the United States Constitution protects our right to this state of mind.

4. The classification of marihuana with addictive and disabling drugs in the Tennessee Drug Control Act is an irrational classification, is not reasonably related to public health, safety, and morals, is too broad in its restrictions, and thus violates the guarantees of "due process of law" and "equal protection of the law" guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

5. The decision of the Criminal Court of Lewis County to foreclose from the jury the consideration of whether we hold

the belief honestly and in good faith that marihuana is a Holy sacrament and a central part of our religion, and to curtail testimony as to our religious practices and teachings unconstitutionally interfered with "due process of law" guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution in that the effect was to deny Petitioners a fair trial by preventing the jury from full consideration of our religious beliefs.

6. The imposition of any criminal sanction as well as the punishment in the Tennessee Drug Control Act for the manufacture and possession of marihuana is "cruel and unusual" punishment, in violation of the Eighth Amendment to the United States Constitution.

(s) Joel Kachinsky
The Farm
Summertown, Tennessee 38483
Attorney for
Stephen Gaskin, Wilbur Jordan,
and Brandon Lerda

I certify that a copy of this notice of Appeal was forwarded to William B. Hubbard, Assistant Attorney General, Nashville, Tennessee on December 16, 1975.

(s) Joel Kachinsky

Filed December 18, 1975

Supreme Court, U. S.
FILED
MAR 6 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1124

STEPHEN GASKIN, et al.,
Appellants,

v.

STATE OF TENNESSEE,
Appellee.

On Appeal from the Supreme Court of the
State of Tennessee

MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1124

STEPHEN GASKIN, et al.,
Appellants,

v.

STATE OF TENNESSEE,
Appellee.

On Appeal from the Supreme Court of the
State of Tennessee

MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM

MOTION TO DISMISS OR AFFIRM APPEAL FROM STATE COURT

The Appellee moves this Court to dismiss the appeal herein, or in the alternative, to affirm the judgment of the Supreme Court of the State of Tennessee on the grounds that (1) the matter is moot, (2) this Court has already ruled upon the issues presented, and (3) it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I

THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

A

The Statute

Tennessee Code, Annotated, Section 52-1432(a)(1)(F) make it a felony to manufacture, deliver or sell a controlled substance classified in Schedule VI and poses an imprisonment of not less than one (1) nor more than five (5) years and a fine of not more than Three Thousand ($3,000.00) Dollars. Tennessee Code Annotated, Section 52-1422 includes marijuana in the controlled substances listed in Schedule VI.

B

The Proceedings Below

The Appellants at the trial in this cause admitted cultivating marijuana for their own use and the use of the other three hundred fifty (350) persons living on the farm. They have contended through the proceedings of this matter that enforcement of the State statute regulating the manufacture and use of marijuana unconstitutionally interfered with their First Amendment rights to the free exercise of their religion. Appellants also contend that the trial court curtailed their testimony as to their religious practices resulting in a denial of due process of law.

The trial court found these objections to be without merit, the Supreme Court of Tennessee affirmed the trial court's action on February 5, 1973, and the Supreme Court of the United States dismissed an appeal from the Supreme Court of Tennessee for want of a substantial federal question on October 15, 1973.

The appellants presented a Petition for a Post-Conviction Relief to the Circuit Court for Lewis County, Tennessee, raising the same issues, which petition was dismissed by the County Court on May 31, 1974. An appeal was taken to the Court of Criminal Appeals of Tennessee and the Court of Criminal Appeals of Tennessee affirmed the Circuit Court's dismissal of the Petition for Post-Conviction Relief on June 25, 1975. The Supreme Court of Tennessee denied a Petition for Certiorari from the Court of Criminal Appeals of Tennessee on November 10, 1975, stating that the Court of Criminal Appeals had correctly dealt with the issues from which this appeal has been brought.

II

ARGUMENT

A

The Case Is Moot.

On page eight (8) of the jurisdictional statement of the appellants, they state that the appellants are no longer in prison or on parole. The case of *Carafas v. Lavallee*, 88 S.Ct. 1556, 391 U.S. 234 (1968), overruling *Parker v. Elis*, 80 S.Ct. 909, 362 U.S. 574 (1960), holds that even though one has been unconditionally released from a state prison, if the action for habeas corpus relief was begun in the federal court system while one was still confined, then the case is not moot. The reason for this was that the persons who had been confined should be given an opportunity to present their issues to the federal courts and if successful, relieved of the stigma attached with the conviction.

In the instant case, appellants did not enter the federal court system before they were unconditionally released by the state authorities. Furthermore, the appellants have had an opportunity to present these questions to this Court and in fact have previously presented them in a direct appeal which was denied by this Court for want of a substantial federal question. It therefore appears that even under the *Carafas v. Lavallee, supra*, ruling, this case is moot and should be dismissed.

B

This Matter Has Been Previously Determined by This Court.

The same issues which have been raised in this appeal were raised in the Direct Appeal of the appellants and the Supreme Court of the United States, on October 15, 1973, found that the Direct Appeal did not present a substantial federal question. This

is a ruling on the merits and therefore is res judicata to any subsequent presentation of the same issues. *United States ex rel. Epton v. Nenna*, D.C.N.Y. 1970, 318 F. Sup. 99 Aff. 446 F. 2d 363, cert. denied 92 S. Ct. 282, 404 U.S. 448.

C

The Case Presents No Substantial Question.

This Court has firmly established that although a State may not interfere with religious beliefs, it may enforce general and nondiscriminatory laws which come in conflict with religious activities in the interest of peace, good order and comfort of the community. *Cantwell v. State of Connecticut*, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A.L.R. 1352; *Reynolds v. United States*, 98 U.S. 145, 25 L. Ed. 244. The people's firm belief that the use of psychedelic drugs, including marijuana, have a demoralizing and harmful effect upon society has been dramatically illustrated by laws in all fifty (50) States and these United States against the manufacture and sale of marijuana.

Both State and Federal Courts have consistently upheld statutes regulating psychedelic drugs in the face of "free exercise of religion" challenges. *Free Exercise of Religion as Defense to Prosecution for Narcotic or Psychedelic Drug Offenses*, 35 A.L.R. 3d 939. The one exception is the case of *People v. Woody*, 61 Cal. 2d 716, 40 Cal. Rptr. 69, 394 P.2d 813 which the California Courts have restricted to the peculiar facts of that case. See *People v. Mitchell*, 244 Cal. App. 2d 176, 52 Cal. Rptr. 884; *People v. Collins*, 273 Cal. App. 2d 486, 78 Cal. Rptr. 151; *People v. Wright*, 275 Cal. App. 2d 738, 80 Cal. Rptr. 335. In *People v. Woody, supra*, the Court found:

> "Although peyote serves as a sacramental symbol similar to bread and wine in certain Christian churches, it is more than a sacrament. Peyote constitutes in itself an object of

worship; prayers are directed to it much as prayers are devoted to the Holy Ghost. On the other hand, to use peyote for nonreligious purposes is sacrilegious. Members of the church regard peyote also as a 'teacher' because it induces a feeling of brotherhood with other members; indeed, it enables the participant to experience the Deity. Finally, devotees treat peyote as a 'protector.' Much as a Catholic carries his medallion, an Indian G. I. often wears around his neck a beautifully beaded pouch containing one large peyote button.

The record thus establishes that the application of the statutory prohibition of the use of peyote results in a virtual inhibition of the practice of defendants' religion. *To forbid the use of peyote is to remove the theological heart of Peyotism.*" [emphasis added]

P2d at 817-818.

On the other hand, marijuana is not indispensable to the faith of the Appellants, but is merely used to reach desired intensification of apperception. This is illustrated by the testimony of Stephen Gaskin, leader of the Appellants, when he stated that he has not only used marijuana in his spiritual teachings, but has also used peyote, LSD, DNT, DET and STP. (B.E. 226-226). If this Court carves out an exception to laws regulating psychedelic drugs for the Appellants, those laws will be unenforceable. Clearly the State's interest in regulating the manufacture and use of psychedelic drugs outweighs the slight infringement made upon the experimental activities of Appellants' religion.

The Appellants have also continually alleged as error the curtailing of testimony at their trial concerning their religious practices, however, Appellants have never stated in any pleadings what testimony was curtailed which was relevant and

beneficial to their case. Stephen Gaskin, the leader of the Appellants, was permitted to testify fully as to the use of marijuana in their religion and religious ceremonies.

III

CONCLUSION

Wherefore, Appellee for all the reasons set out above respectfully moves the Court to dismiss this appeal, or in the alternative, to affirm the judgment entered in the cause of the Supreme Court of Tennessee.

Respectfully submitted,

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